

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITY OF FRANKLIN  
DUDLEY SIMPLER AND  
CHARLES MCCUTCHEN

COMPLAINANTS

VS.

SIMPSON COUNTY WATER DISTRICT

DEFENDANT

CASE NO. 93-089

O R D E R

On March 16, 1993, the city of Franklin and individuals Charles McCutchen and Dudley Simpler filed a complaint with the Commission naming Simpson County Water District ("Simpson District") as defendant. The complainants request, inter alia, that the Commission rescind its prior Order in Case No. 93-054<sup>1</sup> issued March 11, 1993, wherein the Commission approved a construction/rates/financing application pursuant to KRS 278.023 for Simpson District.

Since the initial filing, the complainant, city of Franklin has requested leave to file an amended complaint and has filed a motion to substitute Robert M. Groves for complainant Charles McCutchen. Mr. McCutchen requested to withdraw from the proceeding by letter filed March 25, 1993. The Commission finds good cause

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<sup>1</sup> Case No. 93-054, The Application of Simpson County Water District To Construct, Finance and Adjust Rates Pursuant to KRS 278.023.

exists to grant the motion to substitute Mr. Groves as a complainant and grants leave to Franklin to file the amended complaint reflecting the substitution.

Although seven separate counts form the basis for the complaint, they need not be discussed at length in this Order. The gravamen of the complaint is that the city and both individual complainants are damaged as a result of the Commission's Order in Case No. 93-054 granting approval of Simpson District's application for a certificate, financing, and rate increase pursuant to KRS 278.023. The city deems it will be damaged because the project, as approved, will allow Simpson District to construct facilities to be used in changing water suppliers from the city of Franklin to a Tennessee water supplier. The individuals claim that the district's action in switching water suppliers will result in increased rates to district customers, due to new debt service and water purchase requirements; and, to Franklin's customers as a result of previously incurred debt service requirements being spread over a smaller customer base. The complainants argue that the construction approved in Case No. 93-054 will result in wasteful duplication of facilities. The complainants request that the Commission suspend its Order of March 11, 1993 in Case No. 93-054; initiate an investigation and hold a hearing regarding Simpson District's new water purchase contract with the Tennessee water supplier; revoke the certificate, financing approval and rates previously granted the district; initiate a rate case; and, declare KRS 278.023 unconstitutional.

Simpson District filed a motion to dismiss on March 23, 1993 arguing the complaint should be dismissed for failure to state a prima facie case. In support of its motion, Simpson District asserts that KRS 278.023 does not give the Commission discretion in reviewing applications filed pursuant to the statute.

After review of the complaint, the motion to dismiss of Simpson District, and being otherwise sufficiently advised, the Commission finds the complaint should be dismissed for failure to state a prima facie case.

KRS 278.023 provides in pertinent part:

(1) . . . it is declared to be the policy of the Commonwealth that such agreements shall be accepted by the Public Service Commission, and that the commission shall not prohibit a water utility from fulfilling its obligations under such an agreement.

. . .

(3) The commission shall review the project and the agreement, may recommend changes to the utility and the federal agency, but shall not modify or reject any portion of the agreement on its own authority. . . .

Clearly, the Commission has no discretionary authority under the statute to reject, rescind or suspend any portion of the previously approved project. Further, the Commission has no statutory authority to rule on the constitutional questions presented by the complaint.

IT IS THEREFORE ORDERED that Franklin's motion to substitute a party and request for leave to file an amended complaint be and they hereby are granted.

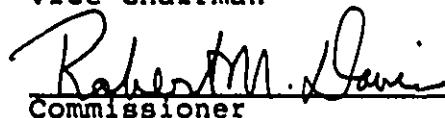
IT IS FURTHER ORDERED that Simpson District's motion to dismiss the complaint for failure to state a prima facie case be and it hereby is granted, and the complaint is dismissed with prejudice.

Done at Frankfort, Kentucky, this 6th day of April, 1993.

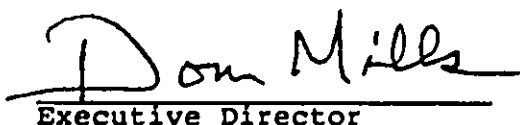
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Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director